

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

CHRISTIE ELLEN ALKEBULAN,
Debtor

THE BANK OF NEW YORK MELLON
TRUST COMPANY, NATIONAL
ASSOCIATION FKA THE BANK OF NEW
YORK TRUST COMPANY, N.A. AS
SUCCESSOR TO JPMORGAN CHASE
BANK N.A. AS TRUSTEE FOR RAMP
2004RS4,

Movant

vs.

CHRISTIE ELLEN ALKEBULAN, Debtor
and THOMAS POWERS, Trustee,
Respondents

CASE NO. 10-37756-SGJ-13

CHAPTER 13

HEARING DATE: July 21, 2011
HEARING TIME: 1:30 P.M.

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND CODEBTOR STAY
OF ACT AGAINST PROPERTY**

NOTICE: PURSUANT TO LOCAL BANKRUPTCY RULE 4001(b), YOU MUST FILE AN ANSWER TO THIS MOTION WITHIN FOURTEEN (14) DAYS OF THE DATE INDICATED IN THE CERTIFICATE OF SERVICE OF THIS MOTION. YOUR ANSWER SHALL INCLUDE A DETAILED AND COMPREHENSIVE STATEMENT AS TO HOW THE MOVANT CAN BE "ADEQUATELY PROTECTED" IF THE AUTOMATIC STAY IS TO BE CONTINUED. IF YOU DO NOT FILE AN ANSWER AS REQUIRED, THE ALLEGATIONS IN THIS MOTION SHALL BE DEEMED ADMITTED, UNLESS GOOD CAUSE IS SHOWN WHY THESE ALLEGATIONS SHOULD NOT BE DEEMED ADMITTED, AND AN ORDER GRANTING THE RELIEF SOUGHT BY THIS MOTION MAY BE ENTERED BY DEFAULT.

PURSUANT TO LOCAL BANKRUPTCY RULE 4001(e), PLEASE TAKE NOTICE THAT, ABSENT COMPELLING CIRCUMSTANCES, EVIDENCE PRESENTED AT PRELIMINARY HEARINGS ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY WILL BE BY AFFIDAVIT ONLY AND THAT YOU MUST SERVE EVIDENTIARY AFFIDAVITS AT LEAST 48 HOURS IN ADVANCE OF SUCH HEARING UPON THE ABOVE-NAMED ATTORNEY AT THE ADDRESS SPECIFIED ABOVE. FAILURE OF AN ATTORNEY TO ATTEND A SCHEDULED AND NOTICED PRELIMINARY HEARING MAY BE GROUNDS FOR DEFAULT RELIEF REGARDLESS OF THE PRESENCE OR ABSENCE OF AFFIDAVITS.

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

COMES NOW The Bank of New York Mellon Trust Company, National Association fka

The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee

Trustee for RAMP 2004RS4¹, their successors and/or assigns ("Movant"), a secured creditor, to file this *Motion for Relief from Automatic Stay and CoDebtor Stay of Act Against Property* ("Motion") against Christie Ellen Alkebulan ("Debtor") and Cranston Alkebulan ("CoDebtor"), and in support thereof Movant would show the Court as follows:

Jurisdiction

1. On or about November 1, 2010, Debtor filed a voluntary petition under Chapter 13 of the Bankruptcy Code, and Thomas Powers was appointed Chapter 13 Trustee.
2. This Court has jurisdiction of this Motion by virtue of 11 U.S.C. §§105, 361, 362, 1301 and 28 U.S.C. §§1334 and 157 and all other applicable rules and statutes affecting the jurisdiction of Bankruptcy Courts generally.

Debt and Collateral Description

3. A Note ("Note") in the original principal amount of \$59,300.00 dated March 24, 2004, was executed by original Christie E. Alkebulan ("Debtor"), to Homecomings Financial Network Inc. In connection therewith, Debtor and CoDebtor executed a Deed of Trust to Homecomings Financial Network Inc. encumbering certain real property located at 1403 Exeter Street, Dallas, Texas 75218 ("Property"). The Deed of Trust reflects that it was duly recorded.

4. Subsequently, all beneficial interest in the Deed of Trust was assigned and transferred to GMAC Mortgage, LLC.

5. Debtor and CoDebtor are in default of the obligations owed to Movant by failing to make the installment payments when due and owing pursuant to the terms of the Note.

¹ GMAC Mortgage, LLC, is the servicer of the subject loan. The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank N.A. as Trustee for RAMP 2004RS4, is the current owner of the subject loan.

6. As of June 6, 2011, the arrearage owed under the Note and Deed of Trust is as follows:

Payments			
<u>Number of Payments</u>	<u>Payment Amount</u>	<u>Payment Dates</u>	<u>Total</u>
1	\$607.49	3/1/2011	\$607.49
3	\$626.16	4/1/2011 to 6/1/2011	\$1,878.48
FEES/CHARGES			
<u>Fee Type</u>	<u>Fee Amount</u>		<u>Total</u>
Late Charges		\$62.19	\$62.19
Suspense		\$<31.03>	\$<31.03>
Total Post-Petition Arrearages as of June 6, 2011			\$2,517.13

7. As of June 6, 2011, the approximate principal balance owed by Debtor and CoDebtor was \$55,419.15. This sum includes principal balance but does not include accrued interest, accrued late charges, escrow advances, and attorneys' fees incurred in connection with this bankruptcy case.

Lack of Adequate Protection

8. By failing to make the regular monthly installment payments due pursuant to the Note, the Debtor and CoDebtor have not adequately protected Movant's interest in the Property. Cause exists therefore for termination of the automatic stay pursuant to 11 U.S.C. §362(d) and termination of the codebtor stay pursuant to 11 U.S.C. §1301.

9. Movant has no remedy available other than to seek relief from the automatic stay and codebtor stay.

10. Movant seeks relief for the purpose of exercising its remedies available under state law, including foreclosure of its mortgage against the Debtor and CoDebtor's interest in the

Property. Movant further seeks relief in order to contact the CoDebtor and Debtor by telephone or by written correspondence. Movant may at its option offer, provide and enter into a forbearance agreement, loan modification, refinance agreement or other loan workout / loss mitigation agreement.

11. Movant has had to retain counsel to represent it before this Court and is incurring legal expenses and attorneys' fees for which it is entitled to be reimbursed under the terms of the Note.

Prayer

WHEREFORE, PREMISES CONSIDERED, Movant prays that, upon considering this Motion, the automatic stay will be terminated as to Debtor and the codebtor stay will be terminated as to CoDebtor with respect to Movant, thereby permitting Movant to pursue all available remedies to obtain possession and control of the Property to the exclusion of the Debtor and CoDebtor. Alternatively, Movant prays that it be afforded adequate protection by: (a) having all payments presently due in this proceeding to Movant brought current; (b) reimbursing Movant for its reasonable attorneys' fees and expenses; and (c) granting Movant such other and further relief, at law and in equity, as is just.

Respectfully Submitted,

PITE DUNCAN, LLP

By: /s/ David Aaron DeSoto

David Aaron DeSoto / SBOT 00790585

ATTORNEY FOR MOVANT

550 Westcott, Suite 560

Houston, Texas 77007

Telephone: (713) 293-3641

Facsimile: (713) 293-3636

Mailing Address

4375 Jutland Drive, Suite 200

P.O. Box 17933

San Diego, CA 92177-0933

CERTIFICATE OF CONFERENCE AND CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2011, at 2:41 p.m., I left a detailed voice mail message for the Debtors' attorney regarding the filing of this Motion and the basis of said Motion. As of the date of the filing of this Motion, I have not received a return telephone call and assume this Motion to be opposed. I hereby certify that a true and correct copy of the foregoing *Motion for Relief from Automatic Stay and CoDebtor Stay of Act Against Property* has been served upon the following parties via electronic means through the Court's CM/ECF system or by pre-paid regular first class U.S. Mail on June 21, 2011.

By: /s/ David Aaron DeSoto

David Aaron DeSoto

DEBTOR'S ATTORNEY
(via electronic notice)

Truman E. Coe, Jr.
2720 N. Stemmons Frwy.
Suite 1202, South Tower
Dallas, TX 75207

DEBTOR

Christie Ellen Alkebulan
1648 Bonnie View Rd.
Dallas, TX 75203

TRUSTEE

(via electronic notice)

Thomas Powers
125 E. John Carpenter Frwy., Suite 1100
Irving, TX 75062-2288

U. S. TRUSTEE

(via electronic notice)

U.S. Trustee
Department of Justice
1100 Commerce Street
Room 976
Dallas, TX 75242-1496

CODEBTOR

Cranston Alkebulan
1403 Exeter Street
Dallas, TX 75218

PARTIES REQUESTING NOTICE AND/OR EFFECTED PARTIES
(via electronic notice if so designated for receipt of such in CM/ECF)

Joe M. Lozano
Brice, Vander Linden & Wernick, P.C.
9441 LBJ Freeway, Suite 350
Dallas, TX 75243

Lisa L. Cockrell
Codilis & Stawiarski, P.C.
650 N. Sam Houston Parkway E. Ste. 450
Houston, TX 77060

Sherrel K. Knighton
Linebarger, Goggan, Blair & Sampson, LLP
2323 Bryan Street Suite 1600
Dallas, TX 75201

Patrick D. McCarren
Hughes Watters Askanase, L.L.P.
333 Clay, 29th Floor
Houston, TX 77002